

or advancement (or retention of his existing job) unless he submits suggestions; and

(d) The invitation to employees to submit suggestions is general in nature and no specific assignment is outlined to employees (either as individuals or as a group) to work on or develop; and

(e) There is no time limit during which suggestions must be submitted; and

(f) The employer has, prior to the submission of the suggestion by an employee, no notice or knowledge of the fact that an employee is working on the preparation of a suggestion under circumstances indicating that the company approved the task and the schedule of work undertaken by the employee.

Subpart E—Exceptions From the Regular Rate Principles

COMPUTING OVERTIME PAY ON AN “ESTABLISHED” RATE

§ 778.400 The provisions of section 7(g)(3) of the Act.

Section 7(g)(3) of the Act provides the following exception from the provisions of section 7(a):

(g) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection:

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(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (1) the employee's average hourly

earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

§ 778.401 Regulations issued under section 7(g)(3).

Regulations issued pursuant to section 7(g)(3) of the Act are published as Part 548 of this chapter. Payments made in conformance with these regulations satisfy the overtime pay requirements of the Act.

GUARANTEED COMPENSATION WHICH INCLUDES OVERTIME PAY

§ 778.402 The statutory exception provided by section 7(f) of the Act.

Section 7(f) of the Act provides the following exception from the provisions of section 7(a):

(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 6 (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than 60 hours based on the rates so specified.

§ 778.403 Constant pay for varying workweeks including overtime is not permitted except as specified in section 7(f).

Section 7(f) is the only provision of the Act which allows an employer to pay the same total compensation each week to an employee who works overtime and whose hours of work vary from week to week. (See in this connection the discussion in §§ 778.207, 778.321–778.329, and 778.308–778.315.) Unless the pay arrangements in a particular situation meet the requirements of